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8 *Attorneys for Defendants*
9 *Walmart, Inc. &*
Wal-Mart Real Estate Business Trust

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 DAWN-MICHELLE HAYES, an individual,

13 Plaintiff,

14 v.

15 WAL-MART REAL ESTATE BUSINESS
16 TRUST, a foreign business trust; WALMART,
17 INC., d/b/a WALMART #2592, a foreign
corporation; DOES 1 through 10; ROE
CORPORATIONS 11 through 20; and ABC
18 LIMITED LIABILITY COMPANIES 21
through 30,

19 Defendants.

20 Case No.:

21 [District Court, Clark County Case No.: A-20-
816334-C, Dept. No.: XI]

**PETITION FOR REMOVAL OF CIVIL
ACTION BY DEFENDANTS WALMART,
INC. & WAL-MART REAL ESTATE
BUSINESS TRUST**

[JURY DEMAND]

22 COMES NOW Petitioners WALMART, INC. (hereinafter “Walmart”) and WAL-MART REAL
23 ESTATE BUSINESS TRUST (hereinafter “the Trust”) (collectively “Defendants”), by and through
24 their attorneys, the law offices of PHILLIPS, SPALLAS & ANGSTADT, LLC, and hereby submit and
25 respectfully show:

26 I.

27 Petitioners WALMART, INC. & WAL-MART REAL ESTATE BUSINESS TRUST are
28 Defendants in the above-entitled action.

1 . . .

2 II.

3 The above-entitled action was commenced by Plaintiff DAWN-MICHELLE HAYES
4 (hereinafter "Plaintiff") on June 10, 2020, in the Eighth Judicial District in and for Clark County, State
5 of Nevada. Plaintiffs served a summons and copy of their operative Complaint on Walmart on June 26,
6 2020. True and correct copies of Plaintiff's Complaint and Summons are attached hereto as **Exhibits**
7 **"A" and "B,"** respectively. Defendants filed an Answer on July 9, 2020. A true and correct copy of
8 Defendant's Answer is attached hereto as **Exhibit "C."** On July 14, 2020, Plaintiff filed a Petition for
9 Exemption from Arbitration (the "Petition for Exemption") in which Plaintiff states on page 5 that
10 Plaintiff's past medical damages now total \$151,154.16. A true and accurate copy of Plaintiff's Petition
11 for Exemption is attached hereto as **Exhibit "D."**

12 III..

13 This Petition is timely filed pursuant to 28 U.S.C. § 1446(b).

14 IV.

15 This is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a), and
16 is one which may be removed to this Court by Petitioner, pursuant to 28 U.S.C. § 1441(a).

17 V.

18 Petitioner is informed, believes, and thereon alleges that Plaintiff Dawn-Michelle Hayes is, and
19 was at the time this action was commenced, a citizen of the State of Nevada.

20 VI.

21 Petitioner Walmart Inc. is, and was at the time this action was commenced, a Delaware
22 corporation with its principal place of business in the State of Arkansas, and therefore a citizen of the
23 State of Delaware and a citizen of the State of Arkansas.

24 VII.

25 Petitioner Wal-Mart Real Estate Business Trust is, and was at the time this action was
26 commenced, a Delaware corporation with its principal place of business in the State of Arkansas, and
27 therefore a citizen of the State of Delaware and a citizen of the State of Arkansas.

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VIII.

The above-entitled civil action is for personal and economic damages Plaintiff allegedly incurred from an incident at a Walmart in North Las Vegas, Nevada.

IX.

A copy of Defendant's Petition For Removal Of Civil Action, seeking removal of the above-entitled action to the United States District Court, District of Nevada, together with a copy of the Summons and Complaint, have been deposited with the Deputy Clerk in the County Clerk's office for the Eighth Judicial District Court in and for Clark County, Nevada.

X.

True and correct copies of all pleadings and papers served upon Petitioner in the above-entitled action are filed herewith.

XI.

This Petition is filed with the Court within thirty (30) days after Petitioner first learned that Plaintiff is seeking reimbursement of medical expenses totaling \$154,151.16, as is evidenced on p. 5 of Plaintiff's Petition for Exemption (Exhibit "D"). Plaintiff is thus clearly seeking over \$75,000 in total damages, and Plaintiff's Petition for Exemption is the "first paper" referencing the fact that Plaintiff is seeking damages that clearly exceed the \$75,000.00 federal diversity jurisdiction threshold.

XII.

Plaintiff's claims for damages, as well as the complete diversity of the parties, meet the requisite requirements set forth by 28 U.S.C. §1441(b) and 29 U.S.C. §1332.

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1 . . .

2 **PRAYER**

3 WHEREFORE, Defendant prays that the above-entitled action be removed from the Eighth
4 Judicial District Court in and for Clark County, Nevada, to this Court.

5
6 DATED this 21st day of July, 2020.

7
8 **PHILLIPS, SPALLAS & ANGSTADT LLC**

9 */s/ Daniel E. Joslyn*
10

11 DANIEL E. JOSLYN, ESQ.
12 Nevada Bar No.14725
13 504 South Ninth Street
14 Las Vegas, Nevada 89101

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17 *Attorneys for Defendants*
18 *Walmart, Inc. &*
19 *Wal-Mart Real Estate Business Trust*

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DECLARATION OF DANIEL E. JOSLYN, ESQ.

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

)

I, DANIEL E. JOSLYN, ESQ. declare under penalty of perjury that the foregoing is true and correct:

9 1. I am an attorney, duly licensed and authorized to practice law within the courts of the
10 State of Nevada.

11 2. I am an attorney in the law firm of PHILLIPS, SPALLAS & ANGSTADT, LLC,
12 representing Petitioners Walmart, Inc. & Wal-Mart Real Estate Business Trust, in the case of *Dawn-*
13 *Michlle Hayes v. Wal-Mart Real Estate Business Trust, et al.*, pending in the Clark County District
14 Court, Case No. A-20-8166334-C, filed in Department No. XI, of the Eighth Judicial District Court, in
15 and for Clark County, Nevada. True and correct copies of Plaintiff's Complaint and Summons are
16 attached hereto as Exhibit A and Exhibit B, respectively. I have prepared and read the foregoing Petition
17 for Removal of Civil Action and know the matters set forth to be true and correct to the best of my
18 knowledge and belief.

19 3. The above-entitled action was commenced on June 10, 2020, in the Eighth Judicial
20 District Court in and for Clark County, Nevada, and is now pending in that Court. Defendant filed its
21 Answer on July 9, 2020. A true and correct copy of Defendant's Answer is attached hereto as Exhibit
22 C. On July 14, 2020, Plaintiff filed a Petition for Exemption from Arbitration in which it was stated that
23 she is seeking past medical damages totaling \$151,154.16 for alleged injuries allegedly sustained at a
24 Walmart store in North Las Vegas, Nevada. A true and correct copy of Plaintiff's Petition for Exemption
25 is attached hereto as Exhibit D.

26 4. On July 21, 2020, I caused to be filed with the County Clerk of the Eighth Judicial
27 District Court, in and for Clark County, Nevada, a Notice of Removal to Federal Court, seeking removal
28 of the above-mentioned action to the United States District Court, District of Nevada, together with a

1 true and correct copy of this Petition for Removal of Civil Action, by depositing such copy with the
2 Deputy Clerk in the County Clerk's Office, Clark County Courthouse, 200 Lewis Avenue, Las Vegas,
3 Nevada 89101.

4 5. This Petition is filed with this Court within thirty (30) days after being served with
5 Plaintiff's Petition for Exemption which is the "first paper" from which the amount in controversy may
6 be ascertained in the above-entitled action. See 28 U.S.C. §1446(b). Plaintiff's Petition for Exemption
7 indicates they are seeking a total past medical damages award of at least \$151,154.16 for alleged injuries
8 allegedly sustained at a Walmart store in North Las Vegas, Nevada. Therefore, Plaintiff's claimed
9 damages exceed the jurisdiction requirement. See Ex. D; 28 U.S.C. §1332(a); *Singer v. State Farm Mut.*
10 *Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (holding the "court may consider facts in a removal
11 petition and may require parties to submit summary-judgment-type evidence" to determine the amount
12 in controversy).

13 6. I caused to be served copies of the Notice of Removal to Federal Court and the Petition
14 For Removal Of Civil Action upon Plaintiff by depositing them in the United States Mail, on July 21,
15 2020, in an envelope properly addressed, with sufficient postage affixed, to:

16 BRIAN D. NETTLES, ESQ.
17 CHRISTIAN M. MORRIS, ESQ.
18 RACHEAL A. ROSS, ESQ.
19 NETTLES MORRIS
1389 Galleria Dr
Henderson, NV 89014

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21 ...
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28 ...

1 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
2 true and correct.

3 Executed this 21st day of July, 2020.
4

5 **PHILLIPS, SPALLAS & ANGSTADT, LLC**
6

7 */s/ Daniel E. Joslyn*
8

9 DANIEL E. JOSLYN
10 Nevada Bar No. 14725
11 504 South Ninth Street
12 Las Vegas, Nevada 89101
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14 *Attorneys for Defendants*
15 *Walmart, Inc. &*
16 *Wal-Mart Real Estate Business Trust*
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2020, I served a true and correct copy of the foregoing, **PETITION FOR REMOVAL OF CIVIL ACTION BY DEFENDANTS WALMART, INC. & WAL-MART REAL ESTATE BUSINESS TRUST [JURY DEMAND]**, as follows:

- By facsimile addressed to the following counsel of record, at the address listed below:
- By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- By Hand Delivery (ROC); and/or
- By Electronic Filing/Service Notification to:

ATTORNEY OF RECORD	TELEPHONE/FAX	PARTY
BRIAN D. NETTLES, ESQ.	702-434-8282	Plaintiff
Nevada Bar No. 7462	702-434-1488 (Fax)	
CHRISTIAN M. MORRIS, ESQ/		
Nevada Bar No. 11218		
RACHEAL A. ROSS, ESQ.		
Nevada Bar No. 14943		
NETTLES MORRIS		
1389 Galleria Drive, Suite 100		
Henderson, Nevada 89014		

/s/ *Joshua J. Kephart*

An Employee of PHILLIPS, SPALLAS & ANGSTADT, LLC